

DATE: July 19, 2011
STAFF: Steve Roy

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

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SUBJECT

First Reading of Ordinance No. 095, 2011, Amending the Appeals Procedure Contained in Chapter 2, Article II, Division 3 of the City Code Relating to the Procedures for Hearing Appeals to the City Council.

EXECUTIVE SUMMARY

This Ordinance changes the timing for the scheduling of appeal hearings and for requesting site inspections and also amends the appeals procedure so as to allow the general public to participate in the appeal hearing and to allow Councilmembers who have filed an appeal to participate in deciding the appeal.

BACKGROUND / DISCUSSION

The City Code establishes a procedure whereby the final decisions of boards, commissions and other decision makers can be appealed to the City Council. The current appeals procedure requires the City Clerk to schedule the hearing on an appeal no less than thirty nor more than sixty calendar days after the filing of the notice of appeal. The thirty-day period within which the hearing on an appeal must be scheduled can be limiting when the City Clerk is attempting to schedule a date that is mutually acceptable to the parties-in-interest, as well as feasible in light of other items to be considered by the Council at any particular meeting within said period. This Ordinance would require that the date of the hearing be set as expeditiously as possible, but no more than one hundred twenty calendar days after the date of filing of the notice of appeal. In addition, it would amend Section 2-55 pertaining to site inspections so as to change the period of time within which a Councilmember needs to request a site inspection.

Also, at a City Council work session on June 14, 2011, the Council directed staff to prepare for its consideration two additional changes. The first of these would allow the public to participate in appeal hearings. The second would allow a Councilmember to participate in deciding an appeal even when he or she has filed the appeal under Section 2-49(4) of the Code. Presently, Section 2-48(c) prohibits Councilmembers who file an appeal from participating in deciding the appeal.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

ORDINANCE NO. 095, 2011
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE APPEALS PROCEDURE CONTAINED IN CHAPTER 2,
ARTICLE II, DIVISION 3 OF THE CODE OF THE CITY OF FORT COLLINS
RELATING PROCEDURES FOR HEARING APPEALS TO THE CITY COUNCIL

WHEREAS, Chapter 2, Article II, Division 3 of the City Code establishes a procedure whereby the final decisions of boards, commissions and other decision makers can be appealed to the City Council (the “Appeals Procedure”); and

WHEREAS, the Appeals Procedure currently requires the City Clerk to schedule the hearing on an appeal so that the hearing is held no less than thirty nor more than sixty calendar days after the filing of the notice of appeal; and

WHEREAS, the thirty-day period within which the hearing on an appeal must be scheduled often makes it difficult for the City Clerk to accommodate the schedules of parties-in-interest and, at the same time, allow sufficient time for the City Council to consider the other items on the agenda at any particular meeting within said period; and

WHEREAS, City staff believes that these scheduling issues can be alleviated by expanding the period of time within which appeal hearings may be scheduled; and

WHEREAS, the Appeals Procedure relating to the inspection of the site of a project development plan or other proposal that is the subject of an appeal requires that a Councilmember wishing to inspect the site notify the City Manager no later than ten days prior to the date of the hearing on the appeal if he or she wishes to conduct a site visit; and

WHEREAS, this provision, when read in conjunction with the requirement that the appellant and all parties-in-interest be notified of the site visit no less than five days prior to the date of the hearing on the appeal, unduly compresses the period of time during which the City Council may conduct a site visit; and

WHEREAS, the City Council has determined that the extension of time within which the City Council may schedule an appeal, and the proposed amendments to the provisions relating to site visits, are in the best interests of the City; and

WHEREAS, at a work session held on June 14, 2011, the City Council discussed several other possible changes to the Appeals Procedure and, at the conclusion of that discussion, directed staff to prepare two additional amendments for Council’s consideration; and

WHEREAS, the first such amendment would allow members of the general public, as well as parties-in-interest, to comment at the hearing on the merits of an appeal and the second would allow Councilmembers who file an appeal to participate in deciding the appeal; and

WHEREAS, the City Council has determined that these additional amendments are also in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Section 2-48(c) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 2-48. Appeal of final decision permitted; effect of appeal; grounds for appeal.

...

(c) Appeals filed by members of the City Council need not include specific grounds for appeal, but shall include a general description of the issues to be considered on appeal. Upon the filing of any such appeal, the director of the affected City service area shall identify the specific Code provisions that may pertain to the issues raised by such appeal and shall provide such information to the City Clerk prior to the date that the notice of hearing on the appeal is to be mailed by the City Clerk to parties-in-interest under § 2-54. Said information shall then be mailed to the parties-in-interest together with the notice of hearing. ~~Councilmembers who file an appeal shall not participate in deciding the appeal. Such Councilmembers may, however, participate in the appeal hearing in the same manner as other appellants, notwithstanding the provisions of Paragraph 2-568(c)(2)~~ **Councilmembers who file an appeal may participate in hearing such an appeal in the same manner as they participate in hearing appeals filed by other parties-in-interest.**

Section 2. That Section 2-54 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 2-54. Scheduling of the hearing.

(a) In the event of an appeal, the City Clerk shall schedule a date for hearing the appeal ~~no less than thirty (30) nor~~ **as expeditiously as possible, but no more than sixty (60) one hundred twenty (120)** calendar days after the date of filing of the notice of appeal. Written notice of the date, time and place of the hearing shall be mailed by the City Clerk to the appellant and all other parties-in-interest no less than ten (10) calendar days prior to the date of said hearing. Said notice shall also include a copy of the notice of appeal or amended notice of appeal, as applicable, and shall inform the parties-in-interest of the period of time within which additional issues may be identified under § 2-56.

(b) Any written materials that any party-in-interest may wish the City Council to consider in deciding the appeal and that fall within the exception to new evidence contained in Paragraph 2-57(b)(1) shall be submitted to the City Clerk no later than 12:00 p.m. on the Wednesday immediately preceding the date upon which the

hearing on the appeal is scheduled to be held. Such materials shall then be included by the City Clerk in the agenda materials pertaining to the appeal.

Section 3. That Section 2-55 of the Code of the City of Fort Collins is amended to read as follows:

Sec. 2-55. Site ~~visits~~inspection/no ex parte contacts.

(a) If a Councilmember wishes to inspect the site of a project development plan or other proposal that is the subject of an appeal, he or she may, no later than ten (10) days ~~prior to the date of the hearing on the appeal~~after the filing of the notice of appeal, request that the City Manager schedule such inspection. Upon receipt of such a request, the City Manager shall forthwith schedule the inspection for a date and time when he or she believes that ~~the~~a majority of the Councilmembers wishing to inspect the site will be able to attend. The City Clerk shall, no less than five (5) days prior to the date of the ~~hearing on the appeal~~site inspection, mail notice of the ~~proposed site~~such inspection to the appellant and to all parties-in-interest to whom notice of the appeal hearing was sent by the City Clerk under Subsection 2-54(a) of this Article. The appellant and all other parties-in-interest shall be entitled to attend such inspection, along with any members of City staff whose presence is requested by the City Manager. Any Councilmembers conducting a site inspection under this provision shall, at the hearing on the appeal, state on the record any observations they made or conversations they had at the site which they believe may be relevant to their determination of the appeal. The requirements of this provision shall not apply to observations made of the site by Councilmembers during the course of their travels within public rights-of-way adjacent to the site, but only to site inspections conducted for the express purpose of gathering additional information that may assist them in determining the appeal.

(b) In order to afford all parties-in-interest a fair opportunity to respond to the information upon which the City Council is to base its decision on appeal, and in order to preserve the impartiality of Councilmembers hearing the appeal, all Councilmembers who intend to participate in hearing the appeal shall, to the extent reasonably possible, avoid communications with parties-in-interest and members of the general public regarding the merits of the appeal prior to the hearing on the appeal.

Section 4. That Section 2-56(a) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 2-56. Procedure at the hearing.

(a) At the hearing on the appeal by the City Council, the presentation of argument on the merits of the appeal shall be made in the following order, subject to such limitations in time and scope as may be imposed at the discretion of the Mayor:

- (1) Explanation of the nature of the appeal and presentation by City staff;
- (2) Comments by Councilmembers who have ~~visited~~ **inspected** the site pursuant to Subsection 2-55(a);
- (3) Presentation of argument by the appellant and any party-in-interest **and/or other member of the public** in support of the appeal;
- (4) Presentation of argument by any party-in-interest **and/or other member of the public** who is an opponent of the appeal;
- (5) Rebuttal presentation by the appellant and any party-in-interest **and/or other member of the public** in support of the appeal;
- (6) Rebuttal presentation by any party-in-interest **and/or other member of the public** who is an opponent of the appeal;

...

Introduced, considered favorably on first reading, and ordered published this 19th day of July, A.D. 2011, and to be presented for final passage on the 16th day of August, A.D. 2011.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 16th day of August, A.D. 2011.

Mayor

ATTEST:

City Clerk